In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 543

NICHOLAS DEB. KATZENBACH, AS ACTING ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

v.

OLLIE MCCLUNG, SR., ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

SUPPLEMENTAL BRIEF FOR THE APPELLANTS

On oral argument of this case, it was suggested that appellees' suit in the district court might have been appropriate as a declaratory judgment action, even if it was erroneous to enjoin the enforcement of the Civil Rights Act in the absence of any showing of irreparable injury to the plaintiffs. It is true that declaratory relief, unlike injunctive relief, may be appropriate even though reliance on legal remedies would not result in irreparable injury. *Nashville, C. & St. L. Ry.* v. *Wallace,* 288 U.S. 249, 262–263; Rule 57, Federal Rules of Civil Procedure. But long-established policies of avoiding premature and possibly unnecessary decision of constitutional questions

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and unwarranted interference with the enforcement of a regulatory statute apply with full force to a suit for declaratory relief. These policies have led us to assert the impropriety of a district court action such as that entertained below. While we recognize that the present posture of the case and the circumstance that a related issue is *sub judice* in the companion *Heart of Atlanta* case may justify an adjudication of the merits, we believe it highly important that the Court make clear that actions for either declaratory or injunctive relief against the Civil Rights Act of 1964 should not be entertained by the district courts.

1. In our prior brief we showed that appellees are in no way harmed by the mere existence of the statute authorizing the Attorney General to sue for preventive relief. Allowing an adjudication of the constitutionality of a federal statute in a context where private parties incur no "very real disadvantages" from deferring decision, does not comport with this Court's "policy of strict necessity in disposing of constitutional issues." *Rescue Army* v. *Municipal Court*, 331 U.S. 549, 568, 571–572. This policy, supplementing the case-and-controversy rule (*id.* at 570–571), is fully applicable to declaratory judgment proceedings. *Id.* at 572–573. Just as the abandonment, in declaratory judgment proceedings, of such traditional prerequisites for equitable jurisdiction as inadequacy of legal remedies does not "overcome the case and controversy requirement, no more was this intended to discard the corollary policy effective within the limits of conceded jurisdiction" that federal or State statutes

not be held unconstitutional absent the strictest necessity. *Id.* at 573, n. 41. See, also, *Federation of Labor* v. *McAdory,* 325 U.S. 450, 461.

Thus, even when the plaintiff seeks only declaratory relief, "federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action." *Poe* v. *Ullman,* 367 U.S. 497, 504. And here the plaintiffs are in no way harmed or threatened with harm by the possibility of a suit against them for preventive relief.

2. We have shown, at pages 18 to 21 of our main brief, that permitting suits like that entertained in the present case would needlessly interfere, in a most substantial way, with the normal processes of administration and enforcement. This is also true of suits for declaratory relief. The Court's decision in *Great Lakes Co.* v. *Huffman,* 319 U.S. 293, is directly in point. There the Court first noted "that the federal courts, in the exercise of the sound discretion which has traditionally guided courts of equity in granting or withholding the extraordinary relief which they may afford, will not ordinarily restrain state officers from collecting state taxes where state law affords an adequate remedy to the taxpayer" (*id.* at 297). The same considerations of avoiding "[i]nterference with state internal economy and administration" were held to impose on the federal courts a corresponding "duty to withhold [declaratory] relief" when the State "affords an adequate remedy to the taxpayer"

which "leaves undisturbed the state's administration of its taxes" (*id.* at 298, 300–301). Cf., *Des Moines* v. *Des Moines City Ry. Co.*, 214 U.S. 179; *Cincinnati* v. *Cincinnati & Hamilton Traction Co.*, 245 U.S. 446.

In cases under Title II of the Civil Rights Act of 1964, there is a wholly adequate remedy for private parties—asserting their contentions as defenses in proceedings for preventive relief—which leaves undisturbed the federal government's administration of the statute. As in the *Great Lakes* case, this consideration makes inappropriate declaratory relief, as well as injunctive relief. "A declaratory judgment, like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest. * * * It is always the duty of a court of equity to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief. Especially where governmental action is involved, courts should not intervene unless the need for equitable relief is clear, not remote or speculative." *Eccles* v. *Peoples Bank*, 333 U.S. 426, 431.

Indeed, as this Court observed in *Public Serv. Comm'n* v. *Wycoff Co.*, 344 U.S. 237, 243, "In recommending Rule 57 of the Federal Rules of Civil Procedure, in order to provide procedures for the declaratory decree, the [Advisory] Committee noted 'A declaration may not be rendered if a special statutory proceeding has been provided for the adjudication of some special type of case * * *.'" Sections 204 and 206 of Title II provide such "special statutory

proceeding[s]" for the determination of rights and duties under Section 201 of the Act.

3. This Court's decisions in *Kennedy* v. *Mendoza-Martinez* and *Rusk* v. *Cort*, 372 U.S. 144, cast no doubt on the principles stated above. Mendoza-Martinez was threatened with immediate deportation on the basis of the statute he attacked (372 U.S. at 147–148); Cort was denied a passport to return to the United States on the same ground (372 U.S. at 151–152). Both thus showed the immediate harm and necessity of judicial relief which is wholly lacking where a party sues to enjoin a possible later suit for an injunction under Title II of the Civil Rights Act of 1964.

CONCLUSION

We recognize that the unique posture of the present case—where the interference with administration of the statute caused by unauthorized district court proceedings has already occurred and the constitutionality of the statute is already in issue before this Court in a closely related case properly entertained by another district court—may make the discretionary denial of declaratory relief unnecessary in this particular instance. If this be so, however, it becomes the more important, in our view, that this Court make clear, for the guidance of the lower courts, that they should not entertain suits of a similar character.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

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